

STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

Robert J. Hix, Chairman
Vincent Majkowski, Commissioner
R. Brent Alderfer, Commissioner
Bruce N. Smith, Director

Department of Regulatory Agencies

Joseph A. Garcia
Executive Director



Roy Romer
Governor

May 5, 1997


The Honorable John D. Dingell, Ranking Member
Commerce Committee Democratic Office
U.S. House of Representatives
564 Ford House Office Building
Washington, D.C. 20515

Dear Representative Dingell:

This letter is in response to the questions contained in your April 10, 1997 letter regarding electric utility industry restructuring. The Colorado Public Utilities Commissioners have not conducted a formal investigation into these matters; therefore, the Staff has prepared a response. The views of Staff should not be interpreted as formal position or opinion of the Commissioners.

If you have any questions about our response, or if we can be of further assistance, please contact me at (303) 894-2000, extension 304.

Very truly yours,


Bruce N. Smith
Director

Enclosure

1580 Logan Street, Office Level 2, Denver, Colorado 80203

Telephone Number (303) 894-2000 Consumer Affairs (303) 894-2070
Permit and Insurance (Outside Denver) 1-800-888-0170 Consumer Affairs (Outside Denver) 1-800-456-0858
V/TDD (303) 894-7880 Fax (303) 894-2065 Hearing Info (303) 894-2025

**Response
of the
Staff of the Colorado Public Utilities Commission
to
Representative Dingell's
Questionnaire**

1. Has your Commission or State legislature considered or adopted retail competition? If retail competition is occurring at this point, what effect has it had on consumer prices?

The Commission has not considered or adopted retail competition since it is a matter of statewide jurisdiction. The Commission has regulatory authority only over investor-owned utilities. The State legislature considered retail competition in the 1996 and 1997 legislative sessions, both time rejecting legislation aimed at setting a deadline for retail competition.

2. Has your State asked Congress to enact legislation mandating retail competition?

No.

- Has it sought Congressional action to enable or assist it in adopting retail competition?

No.

- Has it requested or recommended any other type of Congressional action?

No.

3. Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by a date certain?

The Commission has sufficient authority to resolve stranded cost issues only with respect to investor-owned utilities.

- If not, what timing and other problems might ensue?

Timing problems might be a factor if Congress moves too quickly. However, jurisdictional issues related to cooperatively-owned generation and transmission associations, cooperatively-owned rural electric companies, and municipally-owned utilities will likely pose a more difficult problem.

4. Are there any other areas in which your State currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) or the Public Utility Regulatory Policies Act of 1978?

If federal legislation mandates competition, repeal of PUHCA or PURPA, jurisdictional authority questions must be addressed.

5. Would any constitutional issues be raised by federal legislation:
- mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?
 - requiring states to conduct a proceeding on retail competition, reserving to the states discretion not to adopt retail competition if they determine doing so would not be in its consumers' best interests?

The Staff is not prepared to comment on what, if any, constitutional issues would be raised by federal legislation.

6. From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather prior state action?

The disposition of contractual agreements between Qualifying Facilities and Public Service Company of Colorado would be a major concern for Colorado.

7. In hearings before the Energy and Power Subcommittee during the last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large industrial customers are able to negotiate lower rates with state utility commissions, and that the incidence of such rate reductions is on the increase.

- Are you aware of any study or analysis relevant to your State that supports this conclusion?

No.

- Please provide any information you can on the historical relationship between residential and industrial rates, the extent to which one customer class has subsidized another, and whether or not this trend has altered in recent years.

Attachment 7b provides the historical relationship between residential and industrial rates in Colorado.

8. Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your State, and how they affect various customer classes.

Attachment 7b provides the historical electric rate trends in Colorado for residential, commercial, and industrial customer classes.

9. Some proponents of retail competition hold the view that all electricity resources should be sold at a market price and that state authority to regulate retail rates should be eliminated.

- How would such a policy affect shareholders and ratepayers?

This cannot be answered before the fact, and the outcome is sure to be conditioned by the particular financial, geographic, and other issues relevant to the company under consideration.

- What mechanisms could states or Congress employ to manage these issues?

State public service commissions have broad authority to regulate jurisdictional utilities, with the objective of ensuring just and reasonable rates. Congress sets national policy, but execution of the policy is best left to administrative agencies "close to home."

- In a restructured electric industry, who should receive the benefits of these low-cost resources -- utility ratepayers, utility shareholders or the highest bidder?

The question assumes that there would necessarily be low-cost resources as a result of retail competition. That may be the case in many instances. However, there will be other instances where deregulated electric suppliers will have the ability to charge more for their resource after deregulation (e.g., due to their location and ownership of generating resources).

10. Of those states which have adopted retail competition, how many have addressed the issue of "reciprocity", (that is, whether or not the state can bar sellers located in states which have not adopted retail competition from access to its retail markets)?

- Whose interests does a reciprocity requirement affect? Is a reciprocity requirement the only way to protect those interests, or are there alternatives? Would such a requirement raise constitutional issues?

The Staff is not in a position to respond to these questions at this time.

11. If Congress were to require "unbundling" of local distribution company services as part of a retail competition mandate, what practical problems might this present to state regulators?

If Congress requires "unbundling" of local distribution company services as part of a retail competition mandate, state regulators would be presented with the following problems:

- **Determination of the proper level of unbundling of services;**
 - **Determination of the proper regulatory treatment of each unbundled service;**
 - **Determination of the rate charged for each regulated unbundled service;**
 - **Determination of the level of customer education required for each unbundled service;**
 - **Determination of the level of stranded costs associated with each unbundled service;**
 - **Determination of the need for a provider of last resort for each unbundled service; and**
 - **Determination of the level of workable competition for those services considered for deregulated treatment.**
12. Does your Commission face particular problems in connection with public power or federal power in an increasingly competitive electricity market?

Many Commissions operate in a framework similar to Colorado's, where within the State, there is a mix of investor-owned utilities and non-jurisdictional public power (including municipally-owned, rural electric co-operatives and federally-owned hydro and transmission). The Colorado PUC must work closely with the State legislature to resolve jurisdictional issues before changing the rules on one segment of the utility industry.

How would federal legislation mandating competition by a near term date certain affect funding needs for your Commission?

- If additional funding were needed, would it be available, and what problems might arise if it were not?

The Colorado Commission is funded through an assessment on regulated utilities, based on a percentage of the utility's regulated revenues. A large segment of the electric utility's revenues is attributable to generation. If generation were to be mandated as "deregulated" by Congress, it could result in a loss of a large fraction of the Commission's funds. That could leave the Commission without the resources to retain or hire the personnel required to administer the transition from monopoly to competition.

13. Has your Commission considered or adopted securitization plans as a means of providing for recovery of utility stranded assets?

No.

- What risks are inherent in this approach, and who bears them?

Because retail competition has not been mandated at the federal or at the state level, the Colorado Commission has not formally considered or adopted securitization plans or other stranded cost recovery approaches.

14. There is a wide divergence of opinion as to whether or not PUHCA should be modified or repealed. Given the record level of merger activity, this question may become significant for all state regulators, whether or not they currently have regulatory responsibilities relating to registered holding company activities.

- Do you believe PUHCA impedes competition, at the wholesale or retail level? Can “effective competition” be achieved regardless of whether Congress enacts changes to PUHCA?

The Commission has not developed a position on this matter.

- Do you believe Congress should modify or repeal PUHCA? If so, why, and under what if any conditions?

The Commission has not developed a position on this matter.

- Should Congress enact legislation to modify the holding in *Ohio Power Co. v. FERC*, 954 F.2d 779 (D.C.Cir. 1992)?

The Commission has not developed a position on this matter.